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EXAMINER

MILLER, BRIAN E

ART UNIT PAPER NUMBER

2652

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/575,080
Filing Date: May 19, 2000
Appellant(s): RICHTER ET AL.

MAILED

FEB 25 2005

Technology Center 2600

Patricia A. Verlangieri
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/27/04.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal now involves only claims 1-2 and 6, 8-9; claims 4-5 have been previously allowed with claim 7 being indicated as allowable in this Answer, and claim 3 was objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

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(6) *Issues*

The appellant's statement of the issues in the brief is correct, aside from claim 7 now being indicated as allowable.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-2, 6, 8-9 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

It is noted, however, that since claims 3-5, 7 are not part of this Appeal, those claims should not be in the Appendix, as set forth in 37 CFR 1.192 (c)(9).

(9) *Prior Art of Record*

5,703,868	Kobayashi et al	12-1997
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(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-2, 6, 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kobayahi et al (US 5,703,868). Kobayahi et al discloses an optical recording medium as shown in at least FIG. 3, including: two information carrier faces 23, 30 which encompass semi-transparent layers 24, 31, respectively; a separating layer 25 or 32 disposed between the information carrier layers; two

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transparent covering layers 22, 29, which thickness substantially exceeds the thickness of the information carrier layers which are semi-transparent. Re claim 2, it is considered that Kobayahi et al encompasses that the reproduction “can be” performed from either side (see col. 5, lines 27-39 and col. 9, lines 42-54), however, recording for each layer can only be done from one side. Re claim 6, separating layer(s) 25 or 32 has at least one further information carrying layer 26(27) or 33(34), respectively (see col. 9, lines 17-26). Re claim 8, it is considered that Kobayahi et al discloses that the information carrier layers are at least write once type. Re claim 9, it is considered that Nagashima discloses that the information carrier layers have a preformatted track whose rotational sense is unidirectional and whose directional sense is one of unidirectional and opposed (see col. 6, lines 55-64), and as is known in the art.

(11) Response to Arguments

A...Appellants’ assert, with respect to claim 1, that “Kobayashi et al, does not describe or suggest an optical recording medium including at least two semi-transparent information carrier layers. Rather, Kobayashi teaches a completely different arrangement wherein first and second recording faces of first and second substrates are covered with semi-transparent layers. Since Kobayashi does not teach use of an optical recording medium including at least two semi-transparent information carrier layers, claim 1 is patentable over Kobayashi.”

The Examiner maintains that two semi-transparent information carrier layers are taught by Kobayashi et al, at least by layers 24 & 31 (see col. 8, line 57-col. 9, line 23). While the “arrangement” of layers may be different between the claimed invention and the medium of

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Kobayashi et al, the present claims do not set forth language to patentably distinguish from Kobayashi.

B...Appellants' assert, with respect to claim 2, that "Kobayashi, does not describe or suggest an optical recording medium including at least two semi-transparent information carrier layers that can be read from both sides but can be written to from only one side. Rather, Kobayashi teaches a completely different arrangement wherein first and second recording faces of first and second substrates are covered with semi-transparent layers. Since Kobayashi does not teach use of an optical recording medium including at least two semi-transparent information carrier layers that can be read from both sides but can be written to from only one side, claim 2 is patentable over Kobayashi."

In response, it is maintained that Kobayashi encompasses that the reproduction "can be" performed from either side (see col. 5, lines 27-39 and col. 9, lines 42-54), however, recording for each layer can only be done from one side. It is noted that the claims do not specifically set forth particular laser beam configurations that would accomplish this, thus not obviating the teachings of Kobayashi as described therein.

C... Appellants' assert, with respect to claim 6, that "Kobayashi, does not describe or suggest an optical recording medium including at least two semi-transparent information carrier separated by a separating layer where the separating layer has at least one further information carrier layer. Rather, Kobayashi teaches a completely different arrangement wherein first and second recording faces of first and second substrates are covered with semi-transparent layers. Since Kobayashi does not teach use of an optical recording medium including at least two semi-

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transparent information carrier layers separated by a separating layer where the separating layer has at least one further information carrier layer, claim 6 is patentable over Kobayashi.”

The Examiner maintains the separation layer(s) 25 or 32 of Kobayashi does include “at least one further information carrier layer,” e.g., 26(27) or 33(34), respectively (see col. 9, lines 17-26).

While the “arrangement” of layers may be different between the claimed invention and the medium of Kobayashi et al, the present claims do not set forth language to patentably distinguish from Kobayashi.

D... Appellants’ assert, with respect to claim 8, that “Kobayashi, does not describe or suggest an optical recording medium including at least two semi-transparent information carrier layers that are write-once layers. Rather, Kobayashi teaches a completely different arrangement wherein first and second recording faces of first and second substrates are covered with semi-transparent layers. Since Kobayashi does not teach use of an optical recording medium including at least two semi-transparent information carrier layers that are write-once layers, claim 8 is patentable over Kobayashi.”

The Examiner does not find this persuasive, because the recording medium as disclosed by Kobayashi would encompass this limitation at least for the reason that the disclosure is directed to a DVD that is “designed as a double-sided reproducible optical information recording medium” (see col. 2, lines 3-5). It is considered at least inherent to this medium that it would not be capable of being recorded on subsequent to the initial recording.

E...Appellants’ assert, with respect to claim 9, that “Kobayashi, does not describe or suggest an optical recording medium including at least two semi-transparent information carrier layers that have preformatted tracks the rotational sense of each track viewed from the same side is

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unidirectional and opposed. Rather, Kobayashi teaches a completely different arrangement wherein first and second recording faces of first and second substrates are covered with semi-transparent layers. Since Kobayashi does not teach use of an optical recording medium including at least two semi-transparent information carrier layers that have preformatted tracks the rotational sense of each track viewed from the same side is *unidirectional and opposed*, claim 9 is patentable over Kobayashi.” (emphasis added by Examiner)

In response, this argument is not commensurate with the pending claim language. The claim only sets forth that the rotational sense of each track, viewed from the same side, “is unidirectional” and “whose directional sense is *one of* unidirectional and opposed.” (emphasis added by Examiner). This language is considered to be met by Kobayashi et al, at least from the disclosure at col. 6, lines 57-58, such that the recording is in spiral form or concentric form, i.e., unidirectional.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,



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BEM

February 22, 2005

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